

**CITY OF MORGAN HILL
JOINT REGULAR CITY COUNCIL
AND SPECIAL REDEVELOPMENT AGENCY MEETING
MINUTES – NOVEMBER 16, 2005**

CALL TO ORDER

Mayor/Chairman Kennedy called the special meeting to order at 7:03 p.m.

ROLL CALL ATTENDANCE

Present: Council/Agency Members Grzan, Sellers, Tate and Mayor/Chairman Kennedy
Late: Council/Agency Member Carr

DECLARATION OF POSTING OF AGENDA

City Clerk/Agency Secretary Torrez certified that the meeting's agenda was duly noticed and posted in accordance with Government Code 54954.2.

SILENT INVOCATION

PLEDGE OF ALLEGIANCE

PROCLAMATIONS

Council/Agency Member Carr entered and was seated.

Mayor Kennedy presented a proclamation to David Wilson, proclaiming the week of November 20-26, 2005 as *National Family Week*.

CITY COUNCIL REPORT

Mayor Kennedy indicated that he would be forgoing his presentation this evening due to the expected length of tonight's meeting.

Council Member Carr stated that the Public Safety & Community Services Committee met earlier this evening. He reported the Committee discussed issues and restrictions associated with dangerous dogs. He indicated that there were members from the public in attendance who addressed this issue, and that the Committee requested the Chief of Police return to the Committee with additional information to see if there will be a recommendation to be brought forth to the City Council at a later date.

CITY MANAGER REPORT

City Manager Tewes indicated that he did not have a report to present this evening.

CITY ATTORNEY REPORT

Interim City Attorney Siegel stated that he did not have a City Attorney's report to present this evening.

OTHER REPORTS

PUBLIC COMMENT

Mayor/Chairman Kennedy opened the floor to public comments for items not appearing on this evening's agenda.

Dick Oliver stated that he represents Dividend Homes and that they have been an active participant in the housing building program in Morgan Hill for almost 30-years. He informed the Council that Dividend Homes recently moved their office to Morgan Hill and that they have a number of employees who have worked in Morgan Hill for over 10-years. These employees have approached him and informed him that they would like to reside in Morgan Hill and inquired whether the Council would consider a request to modify the BMR program to allow 1-2 units being built be reserved for employees who otherwise meet all the qualifications of the BMR program. He requested that the Council allow staff to work with him in order to return with a proposed program for consideration.

No further comments were offered.

City Council Action

CONSENT CALENDAR:

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Approved** Consent Calendar Items 1-8, as follows:*

1. **OCTOBER 2005 FINANCE AND INVESTMENT REPORT – CITY OF MORGAN HILL**
Action: **Accepted** and **Filed** Report.
2. **INDOOR RECREATION CENTER (IRC) PROJECT – OCTOBER CONSTRUCTION PROGRESS REPORT**
Action: **Information** Only.
3. **AWARD OF THE BUTTERFIELD WELL PUMP STATION PROJECT**
Action: 1) **Awarded** Contract to Conco West, Inc. for the Construction of the Butterfield Well Pump Station Project in the Amount of \$525,000; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$52,500.

4. **APPROVAL OF FUNDING AGREEMENT AND PROFESSIONAL SERVICES AGREEMENT TO PREPARE A SEWER ASSESSMENT DISTRICT FEASIBILITY STUDY FOR THE COUNTY PORTION OF HOLIDAY LAKE ESTATES**
*Action: 1) **Approved** Funding Agreement and **Authorized** the City Manager, Subject to Review and Approval as to Form by the City Attorney, to Execute the Agreement on Behalf of the City of Morgan Hill ; and 2) **Approved** the Scope of Work for Harris & Associates in the Amount of \$38,000; and **Authorized** the City Manager to Execute a Professional Services Agreement for the Holiday Lake Estates Sanitary Sewer Assessment District Feasibility Study, Subject to Approval as to Form by the City Attorney and Subject to all Parties Executing the Cost Sharing Agreement.*
5. **RESIDENTIAL DEVELOPMENT CONTROL SYSTEM (RDCS) 2005 QUARTERLY REPORT #3**
*Action: **Accepted** and **Filed** the RDCS Third Quarter Report for 2005.*
6. **MORGAN HILL LIBRARY-APPROVAL OF \$29,000 FOR ADDITIONAL DESIGN SERVICES FOR EXTERIOR AND INTERIOR SIGNAGE**
*Action: **Authorized** Amendment of Contract Agreement with Noll & Tam to Provide Additional Services for Exterior and Interior Signage Design and Coordination for the Library.*
7. **AMEND CONTRACT WITH KIDZ LOVE SOCCER**
*Action: **Authorized** the City Manager to Amend Contract with Kidz Love Soccer to Increase Compensation to \$26,000; Subject to Review and Approval by City Attorney.*
8. **JOINT SPECIAL CITY COUNCIL; ARCHITECTURAL REVIEW BOARD; BICYCLE & TRAILS ADVISORY COMMITTEE; LIBRARY, CULTURE & ARTS COMMISSION; MOBILE HOME RENT COMMISSION; CORPORATION YARD COMMISSION; PARKS & RECREATION COMMISSION; PLANNING COMMISSION; SENIOR ADVISORY COMMITTEE; AND YOUTH ADVISORY COMMITTEE WORKSHOP MINUTES OF NOVEMBER 9, 2005**
*Action: **Approved** the Minutes as Submitted.*

Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Vice-chair Tate and seconded by Agency Member Sellers, the Agency Board unanimously (5-0) **Approved** Consent Calendar Items 9 and 10, as follows:

9. **OCTOBER 2005 FINANCE AND INVESTMENT REPORT – REDEVELOPMENT AGENCY**
*Action: **Accepted** and **Filed** Report.*

10. HOUSING REHABILITATION LOAN FOR 50 WEST FIFTH STREET

Action: 1) **Approved** a Loan of up to \$60,000 under the Agency's Housing Rehabilitation Loan Program to Rehabilitate the Home at 50 West Fifth Street; and 2) **Authorized** the Executive Director to do Everything Necessary to Prepare and Execute Loan Documents.

City Council and Redevelopment Agency Action

CONSENT CALENDAR:

Action: On a motion by Mayor Pro Tempore/Vice-chair Tate and seconded by Council/Agency Member Sellers, the City Council/Agency Board unanimously (5-0) **Approved** Consent Calendar Items 11 and 12, as follows:

11. JOINT REGULAR REDEVELOPMENT AGENCY AND SPECIAL CITY COUNCIL MEETING MINUTES OF OCTOBER 26, 2005

Action: **Approved** the Minutes as submitted.

12. JOINT SPECIAL AND REGULAR CITY COUNCIL AND SPECIAL REDEVELOPMENT AGENCY MEETING MINUTES OF NOVEMBER 2, 2005

Action: **Approved** the Minutes as submitted.

City Council Action (Continued)

CONSENT CALENDAR:

Council Member Carr requested that Agenda Item 13 be removed from the Consent Calendar as he would be recusing from voting on this item as he resides within 500 feet of the project area.

Action: On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council, on a 4-0 vote with Council Member Carr absent, **Approved** Consent Calendar Item 13 as follows:

13. AWARD OF 2005-2006 SIDEWALK, CURB AND GUTTER REMOVAL AND REPLACEMENT PROJECT

Action: 1) **Awarded** Contract to J.J.R. Construction, Inc. for the Construction of the 2005-2006 Sidewalk, Curb and Gutter Removal and Replacement Project in the Amount of \$54,975; Subject to Review and Approval by the City Attorney; and 2) **Authorized** Expenditure of Construction Contingency Funds, Not to Exceed \$5,500.

City Council Action

PUBLIC HEARINGS:

14. DEVELOPMENT AGREEMENT AMENDMENT, DAA-04-08: TILTON-GLENROCK – *Ordinance No. 1745, New Series*

Director of Community Development Molloy Previsich presented the staff report on a request to amend an approved development agreement for phases 7-10, totaling 83-lots, of the Capriano development located on the south side of Tilton Avenue, between Hale Avenue and the railroad tracks. She informed the Council that the applicant requested extensions for each of the three remaining years that homes would be built. On October 25, 2005, the Planning Commission considered the request and took an action to recommend Council approval of the extensions on the final maps and building permit submittals to obtain building permits for the fiscal year 2005-06 development phase (34-lots). She indicated that the Planning Commission felt it would be premature to amend time frames for years past fiscal year 2005-06.

Mayor Kennedy opened the public hearing. No comments being offered, the public hearing was closed.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1745, New Series.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1745, New Series, by Title Only, as follows: AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING AN AMENDMENT TO ORDINANCE NO. 1725, NEW SERIES, AMENDING THE DEVELOPMENT AGREEMENT FOR TILTON-GLENROCK, TO ALLOW FOR A 7-MONTH EXTENSION OF THE FINAL MAP SUBMITTAL DATE AND BUILDING PERMIT SUBMITTAL DATE, AND AN 8-MONTH EXTENSION FOR OBTAINING THE BUILDING PERMIT DATE FOR 34-BUILDING ALLOCATIONS GRANTED FOR FISCAL YEAR 2005-2006 FOR MP-02-03: Tilton-Glenrock, by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.*

15. GENERAL PLAN AMENDMENT, GPA-04-12: COCHRANE-CITY OF MORGAN HILL; ZONING AMENDMENT, ZA-04-12; SUBDIVISION, SD-05-05; DEVELOPMENT AGREEMENT, DA-05-11; USE PERMIT, UP-05-11; and SITE REVIEW, SR-05-12: COCHRANE-DINAPOLI-BROWMAN – *Resolution Nos. 5957, 5958, 5959, 5960, & 5961, and Ordinance Nos. 1746 and 1747, New Series*

Mayor Kennedy identified the process to be undertaken this evening with respect to agenda item 15. He indicated that many council members have met with developers and other representatives from the

shopping centers and that the time to disclose these contacts would be made as part of the public hearing; before receiving public comments.

Senior Planner Tolentino informed the Council that this evening, staff would be recommending a project that would be implementing a major goal of the Morgan Hill General Plan: to develop a sub regional commercial center in the City at the northeast quadrant of Cochrane Road and Highway 101. She said that construction of this type/size of shopping center requires a number of entitlements and environmental review. She informed the Council that it would be hearing from a number of individuals who would present the project followed by the description of entitlements and the environmental review process.

Galen Grant, Craig and Grant Architects, project architect, informed the Council that 3-4 neighborhood meetings were held and that the architectural firm tried to address neighborhood concerns. He identified the key issues addressed with the overall master site plan (e.g., location of anchor buildings such as Target; main pedestrian/vehicular entryway located at the center of the site, developing a strong sense of boulevard that is beautifully landscaped and heavily articulated with the back sides of the building; pedestrian access; intersection/spines; parking lot; gateway entry features; hardscape treatment; outdoor plaza/courtyard areas; etc.). He stated that the project is both vehicular and pedestrian friendly. He indicated that as they started to develop the architectural theme, they wanted to make sure that they selected a design concept that everyone would embrace. He indicated that they held meetings with staff, neighborhood residents, and a Planning Commission subcommittee where they presented a number of different architectural themes. He stated that the one theme that everyone seemed to be comfortable with was the art deco theme for the shops as they created a sense of balance and animation. He said that the design included a lot of vertical and horizontal articulations. He stated that the design creates a theme that repeats itself consistently throughout the center in key areas (tower features, radial forms). As they developed the building elevations, they incorporated the use of columns, playful forms, colors, and roof elements. He indicated that the City requested an animated roof architecture so that the design is not just a series of tall flat or pitched roofs. He stated that, traditionally, big box users are difficult to get to embrace an architectural style because of corporate themes they would like to continue from site to site. He indicated that the architectural theme was applied to Target in what they believe was a success; using the same colors, articulating their logo, creating vertical elements, and being consistent with the overall center. It was the architectural firm's goal to develop a concept that the City would be pleased with, the developer would be excited about, and that the Council would be equally approving of the design.

Ms. Tolentino addressed the entitlements being requested and the environmental review process. She informed the Council that a few changes were made to the agenda packet, and that each Council member received a packet of recommended changes. She indicated that the changes replace typographical errors and provide clarification of some items contained in the Council's staff report. The changes address the development agreement and one amendment pertains to the vesting tentative map. She indicated that the changes would be described by staff as they review each application. She addressed the following:

- General Plan Amendment. The current general plan map depicts a future collector road extending north of Cochrane Road from DePaul Drive. With the future collector road, as currently situated, it would bisect the project site and make it difficult to create a cohesive

commercial development for the area. Staff recommends the segment of roadway, north of Cochrane Road, be shifted from DePaul Drive to Mission View in order to allow for a cohesive development of the site. The Planning Commission reviewed the request and unanimously recommends Council approval of the general plan amendment.

- Zoning Amendment. The current zoning for the site is planned unit development (PUD), highway commercial. The purpose of the zoning amendment is two-fold: 1) to establish a precise development as presented by the project architect; and 2) to adopt PUD guidelines. There are two components to the PUD guidelines: 1) the establishment of the permitted and conditional uses. The uses would include mixed commercial/retail uses, restaurants, multiplex cinema, and a grocery store. 2) Development standards. She informed the Council that the applicant is requesting exceptions for a number of PUD standards. She stated that when the city-wide PUD standards were first drafted, they did not anticipate a shopping center of this size or magnitude. Therefore, the Council will find that a lot of the development standards are not conducive for the development of a sub regional shopping center. Thus, one of the reasons for the exceptions to the PUD standards. The second reason is to allow flexibility in the development of the site. She said that there has been a great amount of time and effort spent in the review of the PUD guidelines as well as the exceptions proposed to the PUD guidelines by staff, the architectural review board and planning commission. As a result of this review, a number of changes were made from the applicant's originally proposed language. However, with the changes, both staff and the planning commission can recommend approval of the exceptions, given the nature of the sub regional shopping center. She informed the Council that the applicant is also in agreement with the changes that were made to the PUD guidelines attached to the resolution being recommended for approval this evening.

It was stated that although the PUD guidelines allow flexibility, the development of the site would still need to be in substantial conformance with the precise development plan being recommended for approval this evening.

- Vesting Tentative Map. The site is approximately 66.5 acres and the applicant is proposing to subdivide the site into 36-parcels. This would result in each building and tenant space being built on a separate lot of record as well as the main drive off Cochrane Road and the two detention ponds along the northern boundary of the site. She indicated that the site would be developed in phases, and separate phased parcel maps would be recorded as the site develops throughout the year(s).
- Conditional Use Permit. The applicant is proposing to replace approximately 6,000 square feet of retail uses with a fuel station, convenience market and a carwash. All of these uses have been identified as conditional uses in the PUD. The applicant is requesting approval of a conditional use permit. She stated that when this application went before the planning commission, a majority of the commissioners felt the uses would be appropriate for a sub regional shopping center. Therefore, the commission is recommending approval of the uses. However, given the fact that a fuel center is not proposed to be developed at this time, the

planning commission recommends that the location be subject to review and approval by the architectural review board (ARB) when the applicant is ready to submit a formal application. The planning commission highly recommends that the fuel station not be located along the corner of Mission View and Cochrane Road, nor located along the Cochrane Road project frontage. She indicated that the planning commission recommends approval of the use permit on a 4-2 vote.

- Architectural & Site Review Plan. It was indicated that when the project was reviewed by the ARB, the Board was fully supportive of the project design, including the conceptual site plan, conceptual landscape plan and 6 of the 23 buildings being proposed. The ARB recommends approval of all 6 buildings reviewed; requiring that the final design detail return to a subcommittee of the board for final review and approval. For the other buildings not reviewed by the ARB, a separate application would be required along with formal review and approval by the full Board. The ARB would also review the uniform sign program for the entire shopping center.
- Environmental Review Process. It was indicated that in accordance with state law, an environmental impact report (EIR) was prepared for the project to evaluate any potential environmental impacts that could result from development of the site. A draft EIR was prepared and distributed in July 2005 and a 45-day public review period was provided. During this time, the City received a number of comments from individuals and different agencies. Following the conclusion of the 45-day public review period, City staff took the comments received and provided responses to each comment. The responses to comments were incorporated into the final EIR. She stated that the final EIR identifies that most of the potential impacts anticipated for the development of the site can be mitigated to a less than significant level with implementation and mitigation measures. However, the EIR points out that there are five topics for which significant and unavoidable impacts may occur. These include: agricultural resources, air quality, noise, transportation/circulation, and land use. As significant and unavoidable impacts were identified, the Council will need to adopt a statement of overriding consideration in order to approve the project. She pointed out that one of the items identified as being significant and unavoidable had to do with land use as it relates to Cochrane Plaza. She noted that an economic study was completed as part of the environmental review process, not typical for EIRs. The City implemented this study based on a recent case law that requires a study be conducted. Although the economic study identified that the implementation of the project would result in an impact to Cochrane Plaza, essentially physical urban decay and blight to the center, she stated that it would be difficult to know for certainty whether a project would result in a physical urban decay. Therefore, the EIR took a conservative approach and stated that it will result in a significant and unavoidable impact so that it can be addressed in the EIR.

Director of Business Assistance and Housing Services Toy addressed the development agreement with Morgan Hill Retail Venture LP. He stated that the development agreement and the project implements general plan land use goal #10, sub regional retail development at freeway interchanges. It also implements the economic development strategy goal #1: attract, retain, and expand those businesses that

enhance the local economic development base by retaining or generating new sales tax revenue within the community and providing a shopping convenience presently lacking in the community. He noted that Morgan Hill experiences a lot of sales tax leakage with many residents shopping outside of the community. He informed the Council that in 1999, the City commissioned Sedway and Associates to conduct a retail sales leakage analysis for the general plan update. The study estimated that the sales leakage was at \$80 million per year in gross sales volume. In 2005, it is estimated that the sales leakage would be approximately \$160 million per year. It is staff's belief that these numbers show a trend: the City is experiencing more sales tax leakage now than in prior years. He said that it is important to know that within the City's sale tax data, the City collects sales tax by general retail category and that this category has declined by 19% since 2000. It is staff's belief that the City is experiencing a lot of competition from Gilroy and south San Jose in terms of sales tax dollars.

Mr. Toy stated that the development agreement is needed to memorialize benefits to both parties. He noted that the City entered into development agreements with Morgan Hill Ranch, Madrone Business Parks, Fords, and Dan Gamel RV. These development agreements were tailored to project specific needs. He addressed the incentive package to the developer in order to fill the financing feasibility gap related to land, infrastructure costs and fees. He stated that a consultant group was retained by the City to conduct a financial analysis and it was determined that a gap existed that warranted this level of assistance. He indicated that the total project cost is estimated at \$100 million and that the developer is eligible to receive \$11.5 million in fee waivers, per reimbursements, over 15-years in the proposed financial assistance package. The financial assistance would be given when the developer pulls permits. In return, the City would receive approximately \$34 million in property/sales tax revenues over 15 years. Of this amount, approximately \$1.6 million would come from property taxes. Of the \$34 million, approximately \$26 million would be net new revenue to the City and would provide new shopping amenities/opportunities for the community. Of the \$26 million new revenue, less than half of this amount would be allocated to capital project funds.

Mr. Toy indicated that if the shopping center was in operation today, the project would increase the City's fiscal year 2005-06 sales tax projections of \$5.5 million by approximately 29%, or \$1.6 million. The project would also accelerate the City's opportunities to build City improvements with capital funds. He noted that the project's revenue projections are based on conservative growth estimates of 2%. Therefore, if the project performs better, the City would do better. He identified key points as contained within the development agreement. He indicated that staff recommends approval of the development agreement. He indicated that there are revisions to the development agreement contained in the five page handout presented to the Council this evening as follows:

- Page 4, delete the word "public" in Section 1.6 before "improvements required by the conditions of approval..."
- Page 4 of Exhibit F; revision in Section E(v), to replace "This Section 3.4..." with "This Section 3.E..."
- Addition of Section 4 to Exhibit F to clarify when building permits are to be pulled.
- Addition of Section 5 to Exhibit G to clarify when building permits are to be pulled.

Mr. Toy indicated that there is a clarification to the vesting tentative map: a replacement page 8 to the standard conditions of the vesting tentative map has been provided to the Council that amends Condition H to add “public street and” before “...on-site storm drainage facilities...”

Ms. Tolentino outlined the recommended actions before the City Council this evening as follows: 1) certification of the final EIR. This would include making findings, adopting a statement of overriding consideration, and adopting a mitigation monitoring and reporting program. 2) Adopt resolution for the General Plan Amendment. 3) Introduce ordinance for the zoning amendment with findings to be made for exceptions to the city-wide PUD standards. 4) Adopt subdivision resolution. 5) Introduce development agreement ordinance. 6) Adopt conditional use permit resolution. 7) Adopt resolution approving the architectural and site plan review application. She informed the City Council that representatives from the environmental consulting firm were in attendance, should the Council have questions.

In response to Mayor Kennedy’s question, Ms. Tolentino indicated that a recent trend is to subdivide shopping centers into large number of parcels where each individual business would own a parcel.

Ms. Tolentino addressed the statement of overriding consideration. She clarified that in the resolution certifying the final EIR, it contains a list of overriding considerations outlining economic, social, and employment opportunities that outweigh the significant affects that cannot be mitigated for this project. She referred to page 216 of the agenda packet that lists the statement of overriding consideration. By adopting the statement of overriding consideration, the City is stating that in spite of the environmental impacts, the City believes the overriding considerations justify approval of the project.

Council Member Grzan inquired as to the mitigation measure that would address the loss of agricultural land versus adopting a statement of overriding consideration.

Ms. Tolentino said that it was her understanding that for the agricultural resources impact, there are no feasible mitigation measures that would reduce the impact to a less than significant level. She deferred a clarifying response to the EIR consultants. She informed the Council that there is one other recommended action before the Council that she neglected to mention: The Council direct the City Attorney to return at a future Council meeting with information regarding placing an initiative on the ballot to remove the grocery store restriction on the Cochrane Plaza Shopping Center.

Council Member Carr stated that when the Council approved the existing general plan, this was an area designated for a use similar to the one before the Council. He inquired whether the City adopted statements of overriding consideration for items such as loss of agriculture lands as part of the general plan update.

Ms. Tolentino responded that statements of overriding consideration were adopted as part of the general plan update that included air quality, agricultural resources and a number of other items. She stated that it is not unusual to adopt statements of overriding consideration; particularly given the scale of this project. She said that typical statements of overriding consideration address agricultural resources, air quality, and noise.

Erika Spencer, Pacific Municipal Consultants, addressed the mitigations for agricultural lands. She stated that some communities such as the City of Gilroy have a fee program in place and a classification program where they determine the quality of agricultural land. A fee program is used to mitigate the loss of prime farm land within a particular parcel. As Morgan Hill does not have a program similar to this in place, there are no feasible mitigation measures to be implemented as part of this project.

Director of Community Development Molloy Previsich said that when she looked back at the General Plan and the General Plan EIR for Morgan Hill, it appears that the approach to both of these documents was that Morgan Hill is a city and that it has lands within the urban service area that may have some characteristics that would classify them as prime agricultural land. However, the City does not have an agricultural land use designation and these lands have been designated for urban uses. She said that this particular property has been designated a sub regional commercial shopping center. In 2000, when the general plan was reviewed, along with the analysis, there was a sense that this was a city with urban land uses. Therefore, it was not a significant impact that allowed planning for the development of lands. It was found that when lands developed, it would result in a significant and unavoidable impact and statements of overriding consideration were adopted as part of the general plan. She said that it could be that over the years, there may be a growing sensitivity to the significance that lands may have certain soil characteristics. She noted that the City does not have an agricultural land mitigation program. If this is something the City would be interested in, it would require an analysis, research, study and a determination of what kind of lands Morgan Hill has and how prime they are. She indicated that this EIR took a conservation approach and included the soil characteristics such that land could be used for agricultural purposes and would be converted to urban uses. The City of Morgan Hill does not have a mitigation program and it was determined that mitigations were not feasible. Therefore, the statement of overriding consideration is before the Council with respect to land use that could potentially be used for farming; but are designated and proposed for urban uses.

Mayor Pro Tempore Tate noted that there was an assumption that Phase II would be completed at the end of the second year. If this assumption is made and Phase II develops later, would it influence the assumption negatively?

Mr. Toy noted that the \$11.5 million would be given over time; it would have a lesser value and would result in favor of the City. He said that staff made some basic assumptions as there were many different development scenarios. In some of the scenarios, staff looked at different build out rates. He noted that City assistance is based on pulling building permit fees and the installation of public improvements. For Phase I, waiver of reimbursement impact fees is set at \$5.4 million and at \$3.4 million for Phase II. Phase I would require installation of improvements, and Phase II would require installation of all offsite improvements. Therefore, there are different phases of triggers where staff believes the City would be kept whole in all the various development scenarios.

Council Member Sellers noted that staff indicated the City would receive approximately \$½ million in net new tax dollars over the next 15-years. He indicated the City wants to create a synergy such that existing businesses would have residual benefits as well. He said that this is one of the issues the City tried to address with Cochrane Plaza and the downtown area. It is the City's hope that citizens do not

leave town to shop and that they would shop in Morgan Hill. He inquired whether there was any analysis or assumptions performed in this regard that states that even though there may be an overlap of \$½ million per year that there might be a net benefit given the City would see growth in amenities.

Mr. Toy indicated that staff prepared a conservative analysis; basing the analysis on additional square footage related to the project and the backfilling of the Target space. He said that it would be too costly to perform the quantitative analysis. He said that the consultant or the developer may have additional information relating to synergism.

Korin Crawford, Conley Consultant Group, the firm that conducted the financial analysis to determine whether the level of assistance is warranted, stated that the work they have done in other communities is a generation of change in sales pattern, a generation of additional sales tax dollars/revenues through indirect benefits, and indirect sales through other shops. He said that typically, a more complete/thorough retail study would include the indirect benefits and would look at a change in shopping patterns. He has seen two comparable studies on retail centers conducted in the bay area. One study was conducted in Pinole with the 400,000 square foot Vista Shopping Center. The other study was conducted in conjunction with the shopping center located in East Palo Alto that includes Ikea, Home Depot, and the Expo Design Center. He said that each of these shopping centers had a positive indirect benefit for the existing local businesses and retailers as well as a change in shopping patterns for existing residents. He said that the work done as part of the analysis did not include an analysis of the change in shopping patterns and indirect benefits. He stated that the expenditure potential calculated for Morgan Hill residents was based on county averages. He noted that per capita, Morgan Hill's income is higher than the average in Santa Clara. Therefore, his firm felt there would be a positive benefit from an indirect standpoint.

Mr. Crawford addressed the gap analysis. He stated that when you look at the feasibility of a shopping center as an investment, you look at what you get in terms of revenue/value versus what it costs. If what you get is greater than what it costs, it is a positive surplus of the project. If the value at the end of the day is less than the cost of investment, and what you get is not greater than this amount, an economic gap would result. His firm found that when you look at larger shopping centers (e.g., 300,000-600,000 square feet) they require significant offsite and onsite improvements as well as construction fees. He stated that this development has to install a new road, develop a high quality center, and will be a development that will maintain the environmental integrity of the area with the detention ponds. He indicated that the fee structure in Morgan Hill guarantees quality. All of these things together will make it a high quality and successful center; but will be expensive to build. He informed the Council that based on confidentiality with City staff; he would not be able to identify the existing gap, but that it was above \$15 million.

Council Member Grzan inquired whether Cochrane Plaza would suffer economic difficulties/have problems as a result of this center, or will there be synergy within the center to maintain the Cochrane Plaza as it exists today.

City Manager Tewes informed the Council that staff did not ask the Conley Consultant Group to look at the possible impacts the new center may have on Cochrane Plaza. However, this information is

contained in the economic analysis of the EIR. He indicated that the Conley Consultant Group assisted City staff in the negotiations to identify the need for assistance. It has been reported that the assistance gap was greater than what the City is actually providing. The amount the City is providing is on the basis of what staff views would be appropriate in light of the need, and in light of the fact that the City receives benefits from this project.

Mayor Kennedy noted that under the terms of the development agreement, it states that should the developer submit permits for a grocery store of at least 30,000 square feet within six years, the City would increase the amount of fee waiver reimbursement. He inquired whether the City was providing an incentive to bring a grocery store into the shopping center earlier.

Mr. Toy clarified that over the first 10-years, there is an 8.8% limit to the amount of fee waiver reimbursement the developer could receive. However, should the developer bring in a grocery store prior to year six, the City would increase the 8.8% by an amount that equals the difference between the shopping center rate and the grocery store traffic rate. In no case, is the 11.5% overall cap increased. The developer could qualify for additional fee waivers above the 8.8% quicker than waiting until after year 11.

Council Member Grzan said that the developer has an option to construct a grocery store in the center while at the same time the City is asking the City Attorney to prepare an initiative or consider a process that would lift the restrictions on the Cochrane Plaza to add a grocery store as well. He inquired as to the economic ramification(s) of potentially having two grocery stores within the same proximity. What are the economic impacts to Cochrane Plaza as a result of full development of this project?

Mr. Toy felt that in reality, the City would only see one grocery store developed in the area. The incentive would open additional flexibility and opportunities.

Ray Kennedy, senior associate at Bay Area Economics, the firm that conducted the CEQA analysis related to economic impacts, stated that he took a conservative point of view, and that their benchmark for expenditure by residents was conservative. In the end, the Target Store will be going dark. He did not see an immediate demand for the Target space except for an office supply store, and not necessarily for the entire space. He said that there is a risk that some of the other tenants may choose to move as well based on synergy with the Target Store. This is how they reached the finding of urban decay, the physical impact finding for CEQA in the study. The developers will state that there is a possibility of synergy because they are building a beautiful new shopping center across the freeway with potential new tenants. The conservative analysis stipulates that there will be substantial impacts on Cochrane Plaza. He said that there may be a causal chain of stores closing due to competition, relocation of the Target Store, and other stores closing/following Target across the highway. At some point, when you have a center where there is a high level of vacancy, it becomes difficult for the owners of the center to maintain the property because they are not receiving income from it. This is where you start to see urban decay. If damage and vandalism occurs, the property owners may not respond as quickly as they could. It may be that the owners will reach a point where they will give up renting the center because it would not be feasible to do so. This is where some of the mitigations are being suggested in terms of Target looking for another tenant, or code enforcement. In the interest of being conservative, he felt there is a

risk of urban decay even with mitigations. There would be some economic lost to the Cochrane Plaza Center owners. He stated that the new center would bring in a certain amount of dollars and the old center would lose some dollars. He indicated that his firm did not analyze the net economic impacts as it was not germane to the physical impacts.

City Manager Tewes said that it would be difficult to attribute economic loss to any single business or center. It was his belief that the tax dollars being generated by Cochrane Plaza is approximately \$400,000 annually, generating approximately \$40 million in taxable sales. He said that based on a conservative analysis, it is an aggregate analysis and not center by center. He stated that the economy is dynamic and businesses change; changing their marketing practices. Staff cannot predict exactly how competition will occur. In the aggregate, this conservative analysis suggests that of the \$34 million over 15 years in gross sales, \$8 million would be transferred from other transactions already occurring in the City.

Council Member Sellers said that in light of the questions he has received from the community and some of the confusion raised with a recent newspaper article, he requested that staff reiterate a couple of the bullet terms. He noted that staff mentioned that the developer would not be exempt from paying sales tax fees. He said that a question has been raised with regards to the cost of the proposed shopping center to the City. He did not believe the City would be writing a check to the developer, or be out money. The deal points would be looking at future revenues and a percentage of those future revenues that are to be shared in order to mitigate some of the expenditures.

Mr. Toy said that \$11.5 million would come to the City in either fee waivers or reimbursement. When the developer pulls building permits, they will notify the City as to whether they want to pay for the permits and then get reimbursed, or whether they would like the City to pay the fees. He stated that there would be no monies paid directly to the developer. The City would be taking the new net sales tax dollars and putting them back into the capital project funds where impact fees would normally be deposited. He informed the Council that the City would be spreading the fees over a 15-year period. He clarified that the improvements are regional improvements and do not go toward offsite improvements.

City Manager Tewes confirmed that the City would be contributing funds toward a variety of capital project funds for facilities of community-wide benefit that the development would otherwise be contributing toward. Fund contributions by the City would be from the gain in sales tax. Therefore, the City would not be writing a check to the developer, the City would be using future income streams generated from the project for these purposes.

Mayor Kennedy disclosed that he met with Mr. Browman, Mr. DiNapoli, Mr. Guglielmo and the representatives from the Cochrane Plaza Shopping Center.

Council Member Carr disclosed that he met with the project applicants: Mr. Browman and Mr. DiNapoli, as well as Mr. Morris, the owner of the Cochrane Plaza Shopping Center.

Council Member Grzan disclosed that he met with Mr. DiNapoli, Mr. Browman and Mr. Guglielmo this past Monday.

Mayor Pro Tempore Tate and Council Member Sellers disclosed that they also met with Mr. Browman, Mr. DiNapoli, Mr. Guglielmo, and representatives from the Cochrane Plaza Shopping Center.

Mayor Kennedy opened the public hearing.

Darryl Browman informed the Council that the project team has been working on this project for over 3 years; with a formal application being filed with the City almost 1½ years ago. Since that time, they have received an incredible amount of community input and scrutiny of the project; attending 4 separate neighborhood meetings, 4 Architectural Review Board (ARB) meetings, an ARB subcommittee meeting; 5 planning commission meetings and the Council meeting this evening. As a result of these 15 meetings, and the amount of comments and changes made to the project, he felt the project has benefited significantly. The Council has an extremely well designed project that includes a site plan that provides numerous gathering opportunities, dining activities and central plazas, extensive landscape buffering, pedestrian linkages that tie the retail buildings throughout the center, and provides a nice atmosphere for individuals to walk and participate in the project. He identified the amenities to be provided (e.g., decorative light poles and paving, etc.). The project also provides an attractive boulevard with architecture that enters an individual into the project. He stated that the design team has indicated a willingness to work with the Valley Transportation Authority (VTA) to bring bus service to the shopping center.

Mr. Browman indicated that this project is a joint venture between the fourth generation Guglielmo family; residents and business owners in Morgan Hill for over 80-years. The second partnership group is the third generation DiNapoli family; also long term property owners in Morgan Hill for over 55-years, one of the larger owners of real estate in Santa Clara County. He indicated that they are not merchant builders, but build and hold development long term. Therefore, this would be a long term partnership. He stated that the management philosophy is one of being aggressive. They have a no tolerance program for graffiti and litter. As projects are developed, they make a diligent effort to take development to the highest level possible. They are taking the time to develop the shopping center; making the project one the community would embrace. He informed the Council that he conducted an inventory and found that out of 25 retail projects the DiNapoli family owns, they are 100% leased. It was his belief that maintaining 100% leasing is accomplished by maintaining good quality projects. It was also his belief that the project has a number of unique benefits for the City: 1) would attract new opportunities for dining in the City (e.g., Chiles, Applebee's, Olive Gardens, etc.); and 2) the project would be important to allow Target to continue to operate in Morgan Hill. He provided the Council with a letter from Target that is part of the EIR as well as the marketing package. He said that Target is not able to continue to operate the current facility in a way they feel brands their store correctly. Target believes that if they are not able to relocate, they may have to close the existing store; having a sales transfer to the Gilroy location or look for other opportunities. He felt it important to realize the economic impact of this project. However, the true economic impact is that by allowing this project to move forward, the City retains Target as a tenant and creates synergies that will allow this particular freeway off ramp to become a dominant retail destination.

Mr. Browman noted that the economic study addressed the leakage of sales tax revenues of approximately \$100-\$160 million in Morgan Hill. With this project, the City has the ability to stem the leakage and create \$1.6 million in additional new sales tax revenues to the City. This equates to approximately 27%-29% increase in sales tax dollars. If you look at fee waivers or incentives necessary to make the project work in 15-years, it would be a net of \$11-\$15.5 million after any adjustments for existing waivers to the City. In year 16, this would equate to \$2 million that would be available to the City not currently available. He stated that this project would ensure that Morgan Hill attracts a retail destination and shopping facilities. If a project similar to this is not approved in Morgan Hill, it would open the doors to retail shopping centers locating in other areas such as Coyote Valley and the Bailey Avenue off ramp; losing the opportunity for retail to locate north of the City forever. He indicated that this new project would create approximately 750-1,000 new jobs.

Mr. Browman indicated that there was some discussion about the potential damage this project could have on Cochrane Plaza. If Target was to exit this market place, Cochrane Plaza would be in a far worse position, notwithstanding development of this project. He argued that rather than injuring this project, by adding 1 million square feet of retail to the Cochrane/Highway 101 area, you change the character of the City. The City would make the area a regional draw. He noted that the City has a freeway off ramp with over 110,000 cars per day driving by. By allowing the development of the 1 million square foot retail center, the City has taken Cochrane Plaza from a small community-oriented shopping center and turned it into a regional destination. He stated that concerns were raised by the owners of Cochrane Plaza that Target and the parties involved were not aggressively interested in re-leasing their property. He distributed Targets' marketing package for leasing their store. He said that company-wide, Target has 1,400 stores and that there are 17 stores closed at this time. Of these numbers, 9 of these stores are in contract for purchase. The last two stores to close in California were sold within 3 months of closure. He felt that California has been an incredible market place for re-tenanting boxed stores. He noted that it did not take long for the K-mart building to be re-tenanted. He pointed out that Target has also offered to sell the existing store to the Cochrane Plaza owner, Mr. Morris, so that he would be in a position to control the building and his destiny. He noted that the mitigation measures specifically provides that Target would not deed restrict the property against uses; one of the issues identified by Mr. Morris. It was his belief that Target would be aggressively marketing their space based on their marketing plan. He did not believe that Target would want to carry vacant space on the books and would want to make sure the space is re-leased. He noted that Target has signed an exclusive listing agreement with dates when the marketing package is to be released, and what brokers they would be sent to. He said that Mr. Morris suggests the City place a condition on limiting when the building/occupancy permit is to be made available. He said that restrictions such as these should not be applied to retail. He felt that cities need to allow construction to take place; showing individuals that space will be made available and deliverable in a quick time frame. He informed the Council that retailers focus on opportunities that are eminent and do not focus on opportunities that are far into the future. He felt that retail tenants would be focused on this project

Mr. Browman felt the project would be beneficial to the downtown area. He indicated that the types of tenants that locate in the downtown are not the same tenants that would locate in a large retail complex. He said that they have agreed to include kiosks that would mention retailers and activities that are taking place in the downtown. This would allow for cross shopping opportunities. They have offered to

conduct a forum where they would attend, as well as three of the top retail brokerage companies that focus on downtown redevelopment, in conjunction with the Chamber of Commerce. This forum would allow discussions on what is necessary to develop the downtown area; focusing on the issues that would make it a long term viable downtown area. He felt that as you market a big project like this one, all retail businesses in Morgan Hill would benefit because you have created a significant exposure to retail in Morgan Hill. He noted that the analysis prepared is extremely conservative and does not address synergy. There would be cross shopping opportunities in other facilities and that the benefits would be dramatically more. It was his belief that the package of entitlements before the City Council has had an incredible amount of public scrutiny, including 9 public hearings and 15 separate meetings. He stated that the development team was in full agreement with staff's recommended conditions of approval and the resolutions before the Council. He said that the terms and conditions of the development agreement are the minimum that are necessary to make this project a reality, given the high cost of land, fee structure, impact fees, and the extraordinary public improvements that would be necessary. He noted that he has been working on this project for a significant amount of time. He understands the City and their partners, the Guglielmos, have been trying to develop the land for almost 20-years. He felt this would be an incredible project, one that Morgan Hill should embrace. He requested Council approval of this project so that they can achieve a March 2007 opening. In order to meet this opening date, he needs to commence construction no later than March 2006.

John DiNapoli stated that Mr. Browman summarized the project well. He acknowledged that he is a long term player; has been in the community for a long time; and will be the owner/operator of the project. He thanked Bob Engles for his foresight of this project. He requested Council approval of the project.

Gene Guglielmo, speaking on behalf of the Guglielmo family, indicated that his grandparents came to Morgan Hill in 1925, purchased the property on Cochrane Road in the late 1940s and farmed it for many years. As they saw the feasibility for farming deteriorating and the creation of the Cochrane Road Assessment District, it was felt that the ideal use of the property was to develop it. It has been the family's vision to develop the land and be a part of the development. They want to develop a quality project, one that is good for the citizens and the City; a project that everyone can be proud of. He said there were a number of different projects discussed and that obstacles came up; causing some of the projects to fall through. The Guglielmo family is pleased that they were able to put this quality team together. On behalf of the Guglielmo family, he requested the City take advantage of this great opportunity.

Ralph Borelli indicated that he stood in the Council Chambers in 1976 when the Cochrane Road Assessment District was formed and represented the Guglielmo Family, as well as many other members of the Cochrane Road Easterly Association who were against the Cochrane Road Assessment District as the Council provided no assurances to his clients that they would be able to develop their property, even though they would be assessed a millions of dollars to help install the infrastructure that was ultimately used to develop the Morgan Hill Business Park. This is one of the last parcels asking for the ability to develop. He noted that the 20-year bonds have been paid off; all in the interest of providing economic development for the City. He stated that they have worked hard with city staff; noting that it was a long hard road to complete the packet and create the opportunity to put the 66-acres together. He requested Council support of the project.

Tani Perinoni, a 10-year Morgan Hill resident, confirmed that her retail tax dollars are being taken outside of Morgan Hill due to the lack of a regional quality shopping center in this area. In listening to the presentation this evening, it sounds as though this is a tremendous opportunity for the community. From a tax revenue basis, she felt it would lend itself to law enforcement, fire department, libraries and city services. It was her hope the Council would take serious consideration to the approval of the project; allowing citizens to shop in Morgan Hill.

Art College suggested that this give away is a slap in the face to other developers and established business in the community, as well as the downtown merchants. He noted the City has spent over \$30 million in the downtown trying to revitalize it. Now, the City is reviewing a project and sending a message to its citizens to shop at the shopping center. He felt the development of a shopping center would be pulling sales tax dollars away from the downtown. He did not believe this is what voters want. He understood that meetings were held that only touched approximately 5% of the voters in the community. He noted that when Cochrane Plaza was built, it went to a vote of the people. He felt this shopping center should also go to a vote of the people to determine whether they want to give \$11.5 million in tax monies to this project. He inquired what would happen should Coyote Valley not develop until years down the road. When developed, he felt that Coyote Valley may build their own shopping center and that residents of Coyote Valley would not come to Morgan Hill to shop. He inquired whether there would be bail out assistance to new lease holders in the new shopping center. He did not believe that shoppers in Gilroy and south of Gilroy would rush to shop at the new shopping center. He noted that San Jose has many malls and shopping centers. It was his belief the City would be doing nothing but reshuffling the sales tax dollars in the City, and penalizing the established businesses in Morgan Hill. When the Council gives fees and tax payers' dollars away to a single group, he inquired who would make up the difference. He noted the Council is talking about forgoing monies at this time that could be going into the coffers that would provide police, fire and other services to the community on a gamble. He said that the general fund is already \$1.6 million in the red. He inquired how much more in the red the City would be in with development of this project. If this project is all it is portrayed to be, he did not believe the project needs or deserves a gift from the tax payers in any amount. It was his belief that this would be a bad business decision on the part of the Council. He noted that five pages of revisions were distributed by Mr. Toy and that this packet of information was not made available to the public; a potential violation of the Brown Act which could negate any decisions made by the Council. He also noted that not all of the information was made available via the internet. He felt the Council needs to consider all issues before making a final decision.

Carol Reinhardt, a 21-year Morgan Hill resident, stated that it is a pleasure to see something developed on the east side of Highway 101. He felt that Morgan Hill is trying to be a destination and felt that it needs more than sports complexes. He agreed that shopping dollars need to remain in Morgan Hill, that employment would be enhanced by this particular project, and that it would be a wonderful place to visit. He stated his support of the project. It was his wife's hope that Trader Joes would be a part of this project.

Jim Kirkpatrick stated that he was a member of the Poppy Jasper Film Festival held over the weekend and that it was his belief it was a great success as it brought a lot of individuals to the downtown. He

said that the Granada Theater was a part of the Poppy Jasper Film Festival event; one of four venues. The Granada Theater was cleaned up for the Film Festival and looked wonderful. He felt the Granada Theater was the centerpiece of the downtown. It was his understanding that the Granada Theater would be demolished and destroyed, eventually, because a developer owns the property. He does not see the Poppy Jasper Film Festival continuing without the Granada Theater as a downtown venue. He did not believe there would be synergism when individuals drive down the freeway and shop at the shopping center. He was fearful that dollars would be taken away from the downtown as it was his belief the downtown was going downhill. He inquired what would happen when there are additional dining opportunities near the freeway. He felt a city needs to build from the inside out. Once you develop the outside, he did not believe that development opportunities would come back to the downtown.

Raymonde Etchebarne noted that several individuals drive by past Morgan Hill who do not realize there is a shopping center in Morgan Hill. If individuals see retail shops that attract them, they will realize that there are other shopping opportunities in the community and will patronize them. She felt individuals would also find out about the downtown and patronize these businesses. She stated that she would support the development of the proposed shopping center.

Gary Newquest indicated that he is a 30-year Morgan Hill resident and part owner of an office building in downtown Morgan Hill. As a property owner in the downtown, he sees problems as well as opportunities. He felt that the opportunities are different for the downtown area than what is being described at Cochrane Road. He appreciated that Mr. Browman included the downtown in the overall picture and how they can be brought together. He was confident that should the City add this development on Cochrane Road, it would enhance opportunities for Morgan Hill.

Dennis Brach, a CPA in San Jose and 23-year Morgan Hill resident, stated that he has seen residential development take place, but has not seen retail keep up with residential growth. He felt that this would be a good project for Morgan Hill. He said that he has been acquainted with the DiNapoli family as developer clients since 1969. He said that the DiNapoli family has been honored and recognized by the San Jose Rotary Club for their development activities and what they have done for the City of San Jose. Unlike most developers, they do not sell property. They develop, hold and improve projects. He stated that he would love to see the opportunity for his wife to shop in Morgan Hill. He enjoys dining in Morgan Hill and would like to see more high scaled restaurants locate in Morgan Hill. He requested Council approval of the project as it is long overdue and would add great value to Morgan Hill.

Maria Skovzylas, a 40-year resident of south county, with the last 5-years in Morgan Hill, stated that she was in attendance to become informed; indicating that she has been informed with statistics. If she is interpreting the statistics correctly, it looks as though this project would have a positive affect on Morgan Hill. Although this is going to be a shopping center, it will become a beautiful destination that will provide recreational opportunities. She felt that Morgan Hill citizens need areas to shop as well as a project that will enhance the beauty of the City. She requested the Council consider the project favorably.

Kevin Guertin informed the Council that he is a resident of Mission Ranch, located directly across from the proposed shopping center. He indicated that he attended every meeting held by the proposed

builders. He stated that the builders did a great job presenting their proposals and listening to residents' concerns. However, the site plan did not show the proposed assisted living center, nor the 200 families that reside in multi million dollar homes located directly across that would be significantly impacted by noise, traffic, and other concerns. He noted that there has been no mention of the impacts to the quality of life to residents who reside directly across in the Mission Ranch project. He indicated that he and his family and other families moved to Morgan Hill within the last couple of years; specifically to Mission Ranch, for a better/safer quality of life that is now being threatened to change forever. He felt that Mission Ranch residents would be severely impacted by traffic and noise from Mission View and Cochrane Road. He requested the Council seriously consider its residents' quality of life and the traffic flow to and from Mission Ranch.

Chris Sorci, a 1+ year resident of Mission Ranch, stated that he and his family enjoys this community, but does not know if this would continue if the proposal before the Council is approved. He reviewed the EIR and expressed concern with the plans to relocate the connector street, the traffic flow, and noise issues associated with this project. He also expressed concern with the financial and quality of life impacts that would result to him and his neighbors. He reviewed the transportation, circulation, and noise reports. Under the circulation report, it contains a rating scale that ranges from A-F and rates intersections in Morgan Hill. He noted that the intersection at Cochrane Road and Mission View is rated a B; a good rating. However, after development of the shopping center, it will be rated F according to the chart contained in the report. He indicated that the report included a mitigation plan that states that the mitigation plan increases the size of the intersection, and includes lights and extra lanes to make right/left turns through the intersections. He noted that the intersection would be located approximately 100 feet from his next door neighbor's home and several 100 feet from where he sleeps. He expressed concern with the level of noise to be generated, what his quality of life would be, and the value of his home should he decide to sell it and leave because he does not want to live in the area once it changes. Following the installation of the traffic signal, the report states that the intersection would improve to a D+. He did not find a D+ rating to be acceptable. He said that his backyard was rated at 60 decibels, the maximum acceptable noise level according to Policy 7A of the General Plan. The report also indicates that with the increase in noise and traffic, it will increase by 4-9 decibels. The report also mentions that his six foot sound wall would take into account the changes. It was his belief that noise would be louder and that trucks will turn left near his backyard in order to serve the large project. He stated that he was not opposed to the project, in scope. However, he is opposed to the traffic plan and what the amendment states; moving traffic next to million dollar homes.

Dan Ehlrer, speaking on behalf of the Morgan Hill Chamber of Commerce, informed the Council that at the Board's meeting of Tuesday morning, it voted unanimously to support the Cochrane-DiNapoli-Browman Center project. In doing so, the Board acknowledges that the project presents challenges to some of its members and existing business owners in Morgan Hill. At a time when regional shopping centers in Gilroy continue to expand, a new project of this size, locally, poses additional concerns for established businesses. However, the Board's action reflects its belief that it would be good for Morgan Hill's economic vitality, will bring new businesses/jobs to the community, and will provide the opportunity to create a positive and productive economic synergism that can and would be inclusive of the downtown and other commercial, recreation, and visitor serving areas of Morgan Hill. He said that there is a perception that Morgan Hill "is not opened for business." The perception is that the City is not

interested in businesses coming into Morgan Hill. However, perception can become reality. With City Council approval of this project this evening, the City would be sending an important, positive, productive, and beneficial message that Morgan Hill is open for business and is ready and prepared to work toward an economically sustainable community.

Gary Walton, President of the Downtown Association, stated that the Council's agenda packet contained a letter previously sent from the Association. He stated that the Association is not opposed to the new shopping center, but have concerns regarding the EIR and the mitigations relating to the downtown that states a kiosk would offset the loss of shopping. He felt that this retail venue would attract patrons away from the downtown. He felt that it would be nice if the downtown businesses had incentives of the same magnitude that this project is receiving. He stated that suburban retailers are predatory by definition as new malls and big box outlets and other shopping centers are built to steal demand from existing retailers and not to satisfy unmet demands. He indicated that mall designers understand retail and know how to manage their centers. He said that the big problem for most downtowns is that downtown retailers do not know how to compete against shopping centers. He felt that downtown businesses need to have a centralized management, joint advertising, and anchors. A cinema would be an anchor for the downtown. However, if a theater is built in the new shopping center, how would the downtown attract another theater anchor? He said that downtown should also be allowed to give deals to anchors; including relaxation of dimensions for streets and sidewalks. He indicated that shopping centers use kiosks as incubators. He did not believe the downtown has incubators. He did not believe the downtown would perish. He noted that a consultant indicated that the average life span for a shopping center is 18-years. However, downtowns would be around for a long time. He said that property owners cannot build new buildings and rent cheap. He stated that the downtown will be able to compete on the basis of rents as there are a lot of long time property owners. He said that an economist has projected that for every resident in the downtown, they would spend \$8,000-\$10,000 per person. This can equate to \$2.4-\$3 million of potential sales with residential development in the downtown. He felt that downtown businesses need tools to help compete against shopping malls. He requested continued support of the Downtown Association, the preparation of a detailed economic marketing plan, and the employment of consultants that would assist in this effort. He felt that streamlining the permit processing and rezoning land in the downtown would assist in encouraging more businesses to locate in the downtown.

Allen Palmer stated that he was not in attendance to speak for or against the project. He felt that city councils across the country are mesmerized by future tax increases promised by developers to which there are no guarantees. The chart depicted this evening states the City would have a net increase in sales tax of \$25 million over the next 10-years. However, the City will be giving away \$11.5 million in cash that will not come into the City's coffers; using sales taxes to offset this amount. He felt that concessions are generally given to projects to make them viable. A question that needs to be asked is whether this project is so economically precarious that it would collapse for the price of \$11.5 million in concessions. Would this development team be willing to walk away from the project if they do not receive \$11.5 million from the City? He requested the Council give a definitive answer to the question of whether this project is to be exempt for 10-years from all bonds, parcel taxes or any other increases. He requested that the response be included in the minutes. He requested the Council make some considerations for the downtown. He inquired whether competing businesses to the downtown would be

allowed in the new shopping center. If so, would the downtown stores that provide similar services be able to survive? He recommended the Council eliminate the concessions.

Joan Sullivan, a 45-year resident and former owner of a portion of the property that has been sold for this shopping center, indicated that she has no interest in the property at this time. She said that the area has developed with many homes and residents since she moved to Morgan Hill. She did not begrudge anyone moving in around her. She felt it was time to develop this shopping center and looks forward to being able to shop in Morgan Hill. She did not believe the shopping center would be a detriment to the downtown as different kinds of businesses would locate in the shopping center than would locate in the downtown. She looks forward to having the shopping center and a viable downtown.

Laurie Faulk stated that she and many other residents who reside in Morgan Hill shop outside Morgan Hill. She felt it was time to have more shopping opportunities made available in Morgan Hill in order to compete with Gilroy and San Jose. However, she felt that the concerns of families residing adjacent to the proposed shopping center need to be addressed in order to protect their quality of life. If the proposed development is protecting their quality of life, she felt it needs to be better communicated to residents.

Dan Craig, Executive Director for the Downtown Association, felt the downtown is at a crossroad. There are a lot of positive things taking place: there are three rehabilitation projects taking place, leases are in place for most of the new vacancies, there are Measure C applications for over 400 housing units, and as much as 30,000+ square feet in retail space. He said that there is a level of frustration in the downtown; especially with the news that Tinker Toys and the Lovebug stores will be closing and that there are some businesses that are marginal at this time that may not survive. It was his understanding that the downtown is a long term project and that this project sends a message of urgency to the efforts of the downtown. He indicated that the Association is not opposed to this project, and that they hope it succeeds. However, they have concerns about some of the mitigation measures as they do not believe the Council and staff understand that in order for downtown merchants to compete, the downtown needs to move ahead at an accelerated pace. He indicated that these recommendations were spelled out in their comment letter 13. He stated that the Association does not agree with the EIR when it states there will be minimal impacts, addressing specifically urban decay. He noted that it was mentioned that the downtown is a place for lower rents and local entrepreneurs. However, this is not what the Downtown Association wants for the downtown. They would like to see the lease rates go up. It was their belief that urban decay would eventually take place. Should the City move forward with this proposal, particularly with the incentives, he suggested that this becomes the model for projects in the downtown in order to stimulate new development in the downtown.

Khoa Vo, Mission Ranch resident, informed the Council that he attended several public and planning commission meetings where he raised several concerns and issues. He did not believe the concerns of area residents were addressed. He felt that this would be a great project and would bring a lot of improvement to Morgan Hill. However, development of this project does not address the quality of life for the surrounding residential neighborhoods. He expressed concern regarding traffic and noise impacts as well as the impacts associated with quality of life. He felt the EIR is based on a lot of wrong or false assumptions. He did not believe the guidelines were adequate. He noted the City already allocated 400

residential units to this area and did not believe the EIR included this information in the assessment and mitigations. The EIR states that adding 86 units would add 10 seconds to the metering lights at the northbound Highway 101 ramp. He did not know how long traffic would sit from the metering ramp back up to Malaguerra with the addition of 400 residential units. It was his belief the EIR was supposed to address the worst case scenario and did not believe that the mitigation measures were adequate; according to the EIR. He questioned the need for three large signs in this area; noting the shopping center located across the street only has one large sign for each area to the north and south. He expressed concern with the delivery schedule. He noted that the PUD is requesting a waiver that would allow deliveries to be scheduled between 7 p.m. and 6 a.m., 7 days a week. He did not believe that truck delivery should be allowed in residential areas.

Kirsten Powell, representing the Morris family, owners of the Cochrane Plaza Shopping Center, indicated that she submitted a letter to the Council outlining concerns associated with this project. She stated that these concerns have been expressed to the developer and the planning commission throughout the review of the project. They have questioned the devastating impacts this project would have on retail throughout the city, specifically to Cochrane Plaza. She noted that the EIR addresses this fact and states that it will cause Cochrane Plaza to fall into a devastating cycle of urban decay. She did not believe this was something the Council could ignore or override. She felt the Council needs to give serious thought to this concern in order to protect the retail in place. She stated that the Morris family recognizes the City's desire to bring additional retail to the city, but at what cost? Would approval be worth losing the tenants already at Cochrane Plaza as well as impacting the downtown? She indicated that the letter from Mr. Morris dated November 15, 2005 contains two additional mitigation measures that address specifically the impact that this project would have on Cochrane Plaza. She indicated that they are not trying to prevent the construction of the center, but is asking that Target do what they have agreed to do; lease the space in Cochrane Plaza. She said that meetings and good discussions have been held with Target representatives and the developers, but that they have not received a commitment in writing. She requested the Council add an additional mitigation measure that would help to mitigate the significant impact this project will have on Cochrane Plaza by: 1) limiting the occupancy of the Target space until such time their existing space is rented to a comparable tenant; and 2) that a referendum be placed on the ballot to lift the restriction of a grocery store at Cochrane Plaza. She stated that the Morris family wants to work with the developer and the City. They also want to keep retail within Morgan Hill viable and vital. Considering what the City is doing to bring this project forward in terms of changing the PUD guidelines and giving them \$11 million, she requested the City take similar actions for the retail in place.

Mr. Bowman stated that should the EIR be certified and applied to the project, this would be better than providing something in writing. He noted that he has addressed the concerns raised by the Cochrane Plaza representatives. He confirmed that numerous meetings have been held with Mr. Morris. They would like to make him comfortable with what is taking place. He felt strongly that the best thing that could happen to Cochrane Plaza is a regional project being constructed in this area to change the magnitude of what is taking place. He indicated that Target would not move forward with the project if a condition was added that limits their occupancy. By starting construction and creating activity in this area, it was his belief that the space would be re-leased. He indicated that Target has offered to sell the building to Mr. Morris; allowing him to set his own destiny. He stated that if Mr. Morris is not interested in purchasing the Target building, they would consider purchasing the building as it was his belief that it

would be a building that would lease well. He indicated that Target has provided everyone with a marketing program, and have hired one of the best tenant broker representatives in the country to assist them in leasing the building. He felt that Target's marketing efforts alone would generate enough interest in this space. He felt the issue is who is the best tenant for the shopping center for the long term, even if the building needs to sit vacant for a couple of months.

No further comments being offered, the public hearing was closed.

Council Member Grzan requested that staff address all the mitigation issues that were provided to the residents to address their concerns (e.g., noise, traffic, delivery schedule, etc.). He inquired whether further mitigations could be implemented to address residents' concerns.

City Manager Tewes stated that the agreement does not stipulate that the project would be exempt from taxes. This is reflected in the record already and can be found on page 18 of the development agreement.

Jason Nesdahl, Fehr and Peers, indicated that his firm conducted the traffic study for the proposed project. He addressed the mitigation measure for Mission View. In analyzing the project, Mission View and Cochrane Road were left to the current configuration. He said that adding traffic from the project created a significant impact. To mitigate this to an acceptable level would require signalization and widening of the intersection to four lanes with turning lanes from Mission View to Cochrane Road to assist with the project's traffic.

Mayor Kennedy noted that one speaker indicated that his backyard was located within 100 feet from the intersection.

Mr. Nesdahl displayed the lane configuration and the location of the traffic signal. In response to the resident's concern, he stated that noise and traffic is acceptable according to the General Plan with a level of service at D+ with the proposed mitigation. He noted that Monterey Road and Dunne Avenue is at an overall aggregate level of service D+. He said that this would equate to approximately 35-39 seconds of delay for any given vehicle. He stated that this is a weighted average.

Mayor Kennedy inquired what can be done to reduce the noise level to the adjacent housing development.

Ms. Spencer said that they hired a noise consultant to evaluate the noise level under project and cumulative conditions. Based on their analysis, the noise levels at the homes directly southeast along Mission View Drive measured at 54 dba today. With the project, this would increase to 58 dba, below the City's thresholds for single family development. She noted that this would be exterior noise levels along Mission View Drive.

Ms. Tolentino indicated that a PUD guideline was added by the Planning Commission that requires that all truck deliveries are to take place between the hours of 10 p.m. and 6 a.m. and that the trucks must enter and exit through the main project driveway, off Cochrane Road. Therefore, this would eliminate the possibility of trucks traveling along Mission View. She indicated that this additional restriction

would reduce the potential noise concern. She informed the Council that a noise level of 65 dba for residential areas would violate the general plan.

Council Member Grzan inquired whether the traffic calculations addressed the 400 potential residential units.

Mr. Nesdahl stated that he ran additional numbers today; adding a growth factor at the study intersection at a conservative 2% per year for 5-years growth under cumulative conditions. He stated that no additional impacts would result and that the level of service would remain at D+ with the additional 400 residential units at this intersection. In order to improve the level of service rating, additional lanes could be added. He noted that Cochrane Road is designated as a six lane facility through Mission View. Adding the through lanes would increase the level of service. Averaging all turning lanes as an aggregate by weight would result in a level of service D+. He clarified that this does not mean that every lane at every moment would result in a 35 second delay.

Council Member Carr said that it was his recollection that there was quite a bit of discussion regarding the level of service as part of the general plan update. He noted that the general plan update task brought forth a recommendation to the Council that it was willing to accept a level of service of D+. If the City did not accept the level of service of D+ at intersections such as Monterey and Dunne, it would require 3 left hand turn lanes, double right turn lanes and massive intersections. These were mitigations the Council was not willing to accept. The Council was willing to accept a couple of seconds of delay by allowing intersections to reach a level of service of D+ versus having massive intersections with multiple light poles. He noted that one of the other traffic issues raised this evening was about the metering ramp at Highway 101 and Cochrane Road. He requested an explanation be given about the metering ramps and their controls.

Mr. Nesdahl stated that he did not analyze the metering ramps. It was his belief that a comment was made by an adjacent resident that by adding 400 residential units to the area, it would increase the amount of delay. He said that approximately 400 single family residential units would result in 400 peak hour trips; indicating that not all of this traffic would be accessing the freeway. He could not quantify what this additional traffic would add to the metering ramps without studying it. He did not believe queuing through the intersection during the peak hours would occur with 400 residential units.

Ms. Tolentino clarified that the 400 residential units being discussed are allotments that have been awarded up to fiscal year 2009-2010 and that these allotments are city-wide. These units would not be located in the project area. She noted that an addendum to the Final EIR specifies that a subsequent analysis included 84-units because these are the number of units in the immediate project area. According to CEQA, staff reviewed what was required and that staff found that it resulted in a timing issue for the signal at the north bound ramp on Cochrane Road. However, she indicated that Caltrans routinely monitors intersections as development occurs, and that it would be a routine procedure to increase the cycle. Therefore, no mitigation is required. She informed the Council that staff calculated the numbers to see what a 2% growth factor would do to the traffic model. It was her belief that VTA standards only require a 1.2% growth factor. Staff took a very conservative approach and added a 2% growth factor and that this did not result in additional mitigation measures (cumulative).

Council Member Grzan addressed the issue of waiving fees. He noted that the applicant is requesting that fees be waived. He inquired whether the fee waiver being requested was known early on in the application process or was it a request that recently occurred.

Mr. Toy said that the developer has always indicated that they thought there was some level of gap to be able to move forward with the project. It was only a few months ago, when the City retained the Conley Consultant Group, that staff started to perform the analysis. He informed the Council that the developer came up with the number that was related to fees and/or offsite improvements. Staff performed additional analysis to narrow the gap. It was only in the last few weeks where staff finalized the development agreement and all key business terms were identified.

Council Member Grzan inquired whether this type of assistance is becoming more and more common, or whether there was a trigger mechanism that results where the City would be approached by other developers for assistance in the future.

Mr. Toy informed the Council that it is not uncommon to provide assistance, noting that the City of San Jose assists industrial projects. Gilroy has provided assistance to retail projects such as Gilroy Crossings and other projects where similar types of transactions were performed. He said that everything is related to a gap analysis and making sure that there is a financial need for the assistance; determining what the level should be so that it is an appropriate one. He indicated that a city is gagging the benefits and costs to the city. However, the benefits have to outweigh the costs of providing the benefits. If no assistance were provided, development would not occur. He said that a gap analysis would occur on a case by case basis. Once this project is in place, it was his belief that the economics for the project would change in terms of sales tax revenue. He stated that there are a lot of variables and that it is hard to state whether the City would be opening itself to assisting other development requests. He said that the City's impact fees are lower than Gilroy's. However, it is important to recognize that Morgan Hill's land value is more than Gilroy. When you have lower land values, you can pay more in fees. Having high land values, the fees would be tacked on to fees.

City Manager Tewes said that over the decades, the City has entered into agreements with businesses that had the potential for significant benefits to the City whereby the City or the Redevelopment Agency has provided some assistance to overcome the gap. Each assistance has been unique as the problems with each development are unique. He said that in this particular instance, it is not unprecedented in the sense that this is the largest project the City has dealt with. It is not unprecedented in the rigor of the analysis and the requirement for the disclosure of the financial data from the proponents. He said that often times, businesses will ask for assistance at the podium. The response is that if a business can demonstrate a benefit to the community and demonstrate a financial gap, the City would be prepared to assist. He informed the Council that oftentimes, businesses are not willing to subject themselves to the rigor of meeting the test. He indicated that this test is required under the law for redevelopment assistance, but is not required under the law for the kind of project being proposed this evening. It is staff's belief that it is an appropriate level of rigor and analysis; thus the reason it was applied in this instance.

Mayor Kennedy reopened the public hearing for the purpose of allowing the project proponent to respond to Council Member Seller's question.

Council Member Sellers noted that the project proponents offered real estate assistance to the downtown. It was his hope that the offer stands and that the project proponents assist with the coordination of these services. He noted that another element addressed this evening was entertainment. He said that as the downtown exists today; it has a unique entertainment venue and has unique successful restaurants with more being added to the downtown. Also, mentioned was the use of the theater. He indicated that individuals have offered to operate the theater and that the theater has a reluctant leasee/owner who does not want to operate the theater. Thus, the reason the theater is dark today. However, it was his belief that the theater was a vital element for the downtown. In researching this situation, he looked at how a theater business operates. He inquired whether there was an opportunity for everyone to work together where you have screens in the downtown in addition to the screens in the new shopping center; understanding that the City cannot get all the screens on its own because a critical mass does not exist. On the other hand, if screens are placed outside of the downtown, the City will have lost an opportunity.

Mr. Browman noted that they are long term owners and they are concerned with their relationship with the City, long term. He felt there may be the ability to place a littler pressure on a theater operator. You would not get a large theater operator to locate in a downtown as there are usually several constraints. As screens are located in this project, the City could inform the operator that it has two theaters in the downtown they would like the operator to run. A discussion about cross marketing opportunities from both projects is a good idea. However, he could not guarantee that this would be something that would work. He stated that they would be happy to work with the City and the Chamber of Commerce and schedule the forum because he felt it critical for the downtown that guidelines and expectations are set up to help formulate a redevelopment program that in the long run would make it a nice and viable downtown.

Mayor Kennedy closed the public hearing.

Mayor Kennedy said that if you look at the statement of overriding considerations found on page 216 of the agenda packet, it talks about the real benefits of the project. He read some of the statements of overriding consideration proposed for the project.

Council Member Grzan indicated that he and Council Member Carr served on the General Plan Task Force. He stated that the area being considered was a part of the general plan; noting that this plan went through an extensive review process by residents of the community, planning commission, parks and recreation and the Council. It was known that this area would have this type of project years ago. Therefore, he finds it difficult to say "no" to the project as he was a member of the Task Force that approved the general plan, approving the zoning designation for a sub regional shopping center. However, he expressed concern with Cochrane Plaza and did not know how this can be mitigated. He also expressed concern with what the downtown associations are stating. Although they are supportive of this project, he felt they have issues and that that the Council needs to address them soon. He also heard residents expressing concern about noise, traffic, etc. He noted that staff is stating that the impacts

are within limits. Therefore, it was his hope the concerns would be mitigated. He stated that the Council will watch the project carefully and that should impacts occur, the City would address them.

Council Member Sellers stated that it is known that there will be issues and concerns individuals will have that the City will not be able to address fully, no matter what the Council decides. He felt the City has had a good record of mitigating concerns associated with growth, as it occurs. He noted that there were a lot of concerns associated with the approval of the Ford Store and that the City mitigated the concerns. The neighbors have seen far fewer impacts than they were worried would be the case. He said that this project is long time in coming. He indicated that he used to work for a produce market in this area when he was younger and that there was very little development in the area. He stated that he is humbled that he would be assisting in making the decision to approve a quality development. He appreciates the opportunities that have been offered to help mitigate some of the concerns associated with the downtown; using the leverage of significant retailers who have a larger perspective and can bring significant resources to the downtown. He was convinced there is a solution if the City can get the Granada Theater's property owner to bring theater opportunities to the downtown. He felt this would take the efforts of the private sector, property owner, and the Downtown Association. He stated that he would do his part to make this happen.

Council Member Sellers felt that Cochrane Plaza is an issue as well. He indicated that he has been undertaking economic development related issues on and off for the last 15 years in different capacities; currently on the Council. He informed Mr. DiNapoli that this development cannot leave the City with a black hole on the west side of the freeway in order to build a beautiful facility on the east side of the freeway. He has also spoken with the Target representatives as well as the family that owns the facility. He was convinced that the pieces were in place to get the Target building leased. To place the kinds of restrictions being requested would cause Target to pull out. He felt the City has to insist on the highest and best use for that site as it is critical to the City's long term health. By proceeding with Target and insisting that they move forward with locating the best use for the building and with the mitigations identified in the EIR, it will result in a positive outcome.

Council Member Sellers noted that he did not hear a single negative comment, only positive comments, regarding the development itself. He felt that this speaks well of the project, the property owners, and staff who insisted on the highest level of development. He stated that this is a high quality project that would hold the City in good stead for a while. He said that the pedestrian aspect has been made attractive as well as the extensive use of trees that will help mitigate the project. He appreciated the clarification on the traffic issue as it is a concern to everyone. As the City adds development, he felt it important that City staff monitors traffic impacts. He felt that adding 8+ lanes would be a far worse situation. A few seconds would be added to the stop lights at these intersections. Otherwise, he felt the project has been mitigated. Overall, it will take a small leap of faith, but that he was 99% convinced that this was the best thing the City could do for this center. He stated that he is dedicated to making sure that the shopping center is something that Mr. Engles and the community would be proud of.

Mayor Pro Tempore Tate stated that he has studied this project and has reviewed the materials/documents prepared for the project. He did not know what the alternatives would be should the City not proceed with this project. If not approved, it would send a message that the City is not open for

business and that it would be kicking its major retailer, Target, out of town because they would not remain in Morgan Hill if this project is not approved. He understands that there would be an impact on Cochrane Plaza and the downtown. However, the City needs to figure a way to address and minimize the impacts. He felt the City would be foolish not to approve and allow this project to proceed.

Council Member Carr stated his appreciation of Council Member Grzan's comments about the general plan update as it was one of the things he was thinking about as well. He noted that the first action the Council has to approve is the EIR for the project. He noted that this area has been sited for a project similar to this one for some time. Members of the general plan task force, including Council Member Tate and planning commissioners, went through an extensive review of different areas in town and how they should be zoned. He indicated that this was an area felt suited for a project like the one before the Council. He was pleased the City is meeting general plan goals this evening. He said that a lot has been said about sales tax and sales tax generation for the City. He said that one of the things that this Council has stated clearly is that it has economic goals for the community; one of which is to generate sales tax. Just as important, is to generate sales tax for general fund revenues by providing shopping opportunities/venues for the residents that are sorely needed. He said the City would like to make sure that there are job opportunities within the community; along with restaurant venues and dining opportunities. He felt this project would be meeting several of these goals. In addition, the project would generate sales tax dollars that would assist in funding police/fire protection and expansion of recreational services. He acknowledged that there are impacts associated with any development. In a community where it prides itself as being a small town in a rural environment, the impacts seem larger to citizens. He felt the City needs to find ways to address the impacts. He said that staff has spent a significant amount of time reviewing this project to look at the impacts and ways to mitigate the impacts. He was satisfied with the answers he has heard this evening.

Council Member Carr noted that there were comments made this evening about economic development and whether Morgan Hill is ready to make a statement that it is truly open for business. He said that he was not always concerned that individuals find the City difficult to work with because what the City finds, as a result of this, is a positive developer who is willing to go the extra mile to build something that everyone can be proud of; like this developer. He did not believe the City's neighbors to the north and south always achieve these results when they open their doors to businesses. They do not hold developers' feet to the fire; find a developer that has a family that has a well known name in the community, and will be in town for generations and generations to come. This would not just be an investment to be sold to the next highest bidder. By the comments heard this evening, the comments seen in the paper and the comments to be seen after tonight's meeting, he felt the developers and property owners of the site understand that there will be requirements to be a good neighbor and good partners in Morgan Hill, working with the City on these items. He was satisfied with the conversation he has had with the developers and property owners who are willing to meet the higher threshold that Morgan Hill residents expect. It is his hope the Council will move forward with approving the project this evening.

Mayor Kennedy indicated that he met with the representatives of Target and that he has been impressed with the representatives as well as their team of brokers who will go out and find retailers who will fill their space. He was also impressed with their success record and their willingness to lease the space. He

understood that this is a concern of the Morris family. However, he was satisfied that Target will make this work for the Cochrane Plaza. Therefore, this concern has been met to his satisfaction. With respect to the downtown, he was pleased to hear the commitment from Mr. Browman to work with retailers to work on the downtown and help revitalize it. He noted that the City will be going through a process of extending the Redevelopment Agency where the City can focus more attention on the downtown. He said that the timing on the sort of investments the City can make in the downtown would be helpful as the City works through this process. He thanked Mr. Browman for this commitment.

Mayor Kennedy addressed another venue for theaters in the downtown. He indicated that he has spoken with the individual who holds the lease for the Granada Theater recently. He stated that the lease holder is committed to keeping the Granada Theater as an entertainment venue and is not interested in tearing it down as mentioned. They have spoken to an individual who is interested in this use. If the City can make this work, it would be a benefit for the downtown. He thanked the Planning Commission, the ARB and City staff for their hard work and the long hours spent in putting this project together. This hard work helps give the Council a better perspective so that it can make an informed decision. He was convinced that this project would be good for Morgan Hill. He felt that Morgan Hill needs to position itself to capture retail businesses being lost to other communities. This project gives the City the opportunity to do this; especially with the likelihood of Coyote Valley developing soon. He indicated that he has seen the Coyote Valley plans and they do not include a major shopping center. The plan is focused on vertical mixed use pedestrian type shopping; a different concept. It was his belief that this project would allow the City to capture some of the future growth of Coyote Valley. He felt that a quality team and a quality project have been put together. He was pleased the City has the DiNapoli, Guglielmo, and Borelli families as well as Mr. Browman and his company in putting this project together. It was his belief that the City has a winning project, is supportive of it, and felt the City needs to move forward.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5957, Certifying the Final Environmental Impact Report, Making Findings, Adopting a Statement of Overriding Considerations, and Adopting a Mitigation Monitoring and Reporting Program.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5958, approving the General Plan Amendment.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1746, New Series, the zoning amendment ordinance.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1746, New Series by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A ZONING AMENDMENT TO ESTABLISH A PLANNED UNIT DEVELOPMENT FOR A 66.49-ACRE AREA LOCATED AT THE NORTHEAST***

QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (APNs 728-37-001, -002, -004, -005 & -007) (ZA-04-12: COCHRANE – DINAPOLI/BROWMAN), by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.

Council Member Carr said that initially, the 36-lot subdivision was a concern to him. He said that the City has had other experiences with shopping centers in town where multiple owners and multiple subdivisions were causing problems as the City tried to redevelop the areas. As this is an owner that wants to own these lots and for other business purposes who wants to proceed with the subdivision, he felt it appropriate in this instance. He did not believe this should be a precedent the City should be setting. He recommended the City give serious consideration to the long term implication to the subdivision and parceling of lots.

Interim City Attorney Siegel indicated that the Council would be approving the vesting tentative map as well. He said that amendments identified by staff were made available this evening and that they were described for the record as to what the changes were. He said that the changes correct a couple of typos and add two conditions relating to ensuring that the developer pulls the development permits.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5959, approving the vesting tentative/subdivision map, as amended by staff.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Waived** the reading in full of Ordinance No. 1747, New Series, the development agreement ordinance.*

Council Member Carr addressed the development agreement as the Council received a lot of comments regarding the agreement. He said that the development agreement is a significant tool for the City as it assists in getting the project the City and the community is looking for. He said that there has been discussion in the newspaper recently, and again this evening, about the incentive program. He felt the City Manager clarified one of the issues raised by an inaccurate story and by someone this evening. He clarified that this was not cash out of the City's pocket. The City is talking about an incentive program that is looking at future sales tax dollars that this site would be generating. The City would be sharing these sales tax revenues in order to pay for some of the fees in place. He said that each Council member has stated how supportive they are of the downtown. He stated that he would continue to support the downtown as a resident and as a consumer. As the holiday season approaches, he felt citizens can make an important statement by shopping downtown.

Mayor Pro Tempore Tate said that a question that keeps coming up on the development agreement is that it is \$11.5 million package and whether this was the best deal the City could make. He did not believe that City staff would bring this proposal to the Council if it was not the best deal. He stated that he has complete faith that this is the best deal the City can get.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council **Introduced** Ordinance No. 1747, New Series, by Title Only as follows: **AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF MORGAN HILL APPROVING A DEVELOPMENT AGREEMENT BETWEEN THE CITY OF MORGAN HILL AND MORGAN HILL RETAIL VENTURE, LIMITED PARTNERSHIP, FOR CERTAIN REAL PROPERTY CONSISTING OF APPROXIMATELY 66.5 ACRES LOCATED IN THE CITY OF MORGAN HILL AT THE NORTHEAST QUADRANT OF COCHRANE ROAD AND HIGHWAY 101 (DA-05-11: Cochrane-DiNapoli-Browman), amending the development agreement (exhibit A) by the following roll call vote: AYES: Carr, Grzan, Kennedy, Sellers, Tate; NOES: None; ABSTAIN: None; ABSENT: None.***

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5960, approving the conditional use permit.*

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Adopted** Resolution No. 5961, approving the architectural and site plans.*

Council Member Grzan said that we talk about Morgan Hill being a business friendly city. He commended staff for their work on this effort. He felt that it should be known that the City has a business-friendly staff that is willing to assist. However, being business friendly does not always mean that the City has money and will waive fees in the future.

Council Member Sellers requested that when the City Attorney and City Clerk return with information regarding a ballot initiative, that staff informs the Council if there are additional costs that are being charged by the Registrar of Voters Office for placing the measure on the ballot. He noted that Target is targeting a March 2006 timeframe to lease their former facility. This would be a helpful timeframe as far as deciding whether or not to place the measure on a June 2006 ballot.

Action: *On a motion by Mayor Pro Tempore Tate and seconded by Council Member Sellers, the City Council unanimously (5-0) **Directed** the City Attorney to Return at a Future City Council Meeting with Information Regarding Placing an Initiative on the Ballot to Remove the Grocery Store Use Restriction from the Cochrane Plaza Planned Unit Development (PUD).*

Mayor Kennedy informed the residents who were concerned about the noise and traffic issues that the City would do its best to mitigate these impacts. He noted the City has a quality developer and competent/qualified staff to work on these concerns. He stated the City would try to make this development as acceptable as possible.

City Manager Tewes stated that it was clear, throughout the discussions about the quality of the project and commitments to investors. He said that City staff made clear what was important to the community

and that it was his belief the City and developer were able to come up with a project that meets everyone's objectives. He thanked staff members who worked over a year on this project; including staff members from the Public Works Department; Engineering Staff; Business Assistance & Housing Services Department; Planning Division; Building Division, City Attorney's Office; EIR, traffic, feasibility, and economic consultants; and volunteer citizens who added value to the process (e.g., Planning Commission and Architectural & Review Board). He recognized Rebecca Tolentino, the project manager and recently promoted senior planner; and Garrett Toy who assisted on the economic development side.

FUTURE COUNCIL-INITIATED AGENDA ITEMS

No items were identified.

ADJOURNMENT

There being no further business, Mayor/Chairman Kennedy adjourned the meeting at 10:47 p.m.

MINUTES RECORDED AND PREPARED BY:

IRMA TORREZ, CITY CLERK/AGENCY SECRETARY